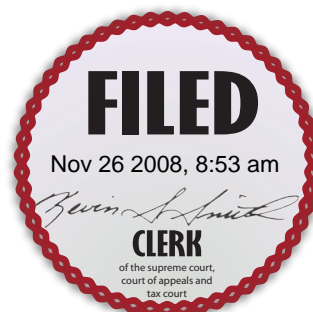


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

BENJAMIN CLAUNCH,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0804-CR-240

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Clark Rogers, Judge
Cause No. 49G16-0602-CM-021468

November 26, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Benjamin Claunch appeals his conviction for Class A misdemeanor battery for burning, choking, and hitting his girlfriend. Specifically, he contends that the evidence is insufficient to support his conviction because he acted in self-defense. Finding his argument an impermissible invitation to reweigh the evidence, we affirm.

Facts and Procedural History

On December 24, 2005, Benjamin and his girlfriend Ashley McQueen had been living together for about five months in an Indianapolis home owned by Benjamin's grandparents. That evening, Benjamin and Ashley arrived at their residence after a Christmas dinner with Ashley's family. After they arrived home, they began discussing the problems with their relationship. Ashley decided to take a bath to relax and cool off the discussion. Benjamin left the residence to travel to the liquor store, where he purchased two bottles of wine.

After drinking the first bottle, Benjamin became aggressive and began yelling. Rather than confronting him, Ashley went to sleep. After midnight, Ashley awoke to find Benjamin burning first her arm and then her leg with an extended wick candle lighter. As Ashley then attempted to find her cell phone, Benjamin held her by the neck against a wall. Ashley began swinging her arms to try to escape from Benjamin's grasp, hitting Benjamin five or six times. Benjamin pushed Ashley, causing her head to hit a door frame. Then Benjamin hit her face with a closed fist, causing Ashley to lose consciousness. When she awoke, Ashley was in the bathroom with Benjamin standing

over her holding a straight razor blade. Benjamin threatened to kill himself as well as cut Ashley.

Ashley spotted her cell phone, pushed past Benjamin, opened the door to make Benjamin think she had left the residence, and then hid in the kitchen between the countertop and the refrigerator. Ashley phoned her sister for help. Her sister then called the police. When the police and Ashley's sister arrived on the scene, Benjamin fled from the residence. Ashley testified that she suffered a fractured hand, concussion, pain, swelling, and burn scars from the incident.

The State charged Benjamin with Class A misdemeanor domestic battery¹ and Class A misdemeanor battery.² After a bench trial, the trial court found Benjamin guilty of the Class A misdemeanor battery only. The trial court sentenced him to 365 days with six days executed and 359 days suspended to probation. The trial court also ordered Benjamin not to have any contact with Ashley, to undergo twenty-six weeks of domestic violence counseling, and to undergo substance abuse evaluation and treatment if necessary. Benjamin now appeals.

Discussion and Decision

Benjamin raises only one issue on appeal: “[w]hether the evidence is sufficient to support a conviction for battery where Mr. Claunch acted in self-defense and the alleged victim’s injuries were consistent with having been the aggressor.” Appellant’s Br. p. 1. When reviewing the sufficiency of the evidence to support a conviction, appellate courts must consider only the probative evidence and reasonable inferences supporting the

¹ Ind. Code § 35-42-2-1.3(a).

² Ind. Code § 35-42-2-1(a).

verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). It is the factfinder's role, not that of appellate courts, to assess witness credibility and weigh the evidence to determine whether it is sufficient to support a conviction. *Id.* To preserve this structure, when appellate courts are confronted with conflicting evidence, they must consider only the evidence most favorable to the trial court's ruling. *Id.* Appellate courts affirm the conviction unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.* (quotation omitted). It is therefore not necessary that the evidence "overcome every reasonable hypothesis of innocence." *Id.* at 147 (quotation omitted). The evidence is sufficient if an inference may reasonably be drawn from it to support the verdict. *Id.*

The standard of review for a challenge to the sufficiency of evidence to rebut a claim of self-defense is the same as the standard for any sufficiency of the evidence claim. *Wilson v. State*, 770 N.E.2d 799, 801 (Ind. 2002). If a defendant is convicted despite his claim of self-defense, this Court will reverse only if no reasonable person could say that self-defense was negated by the State beyond a reasonable doubt. *Id.* at 800-01.

In order to convict Benjamin of Class A misdemeanor battery, the State had to prove that Benjamin knowingly in a rude, insolent, or angry manner touched another person, resulting in bodily injury. Ind. Code § 35-42-2-1(a). A valid claim of self-defense is a legal justification for an otherwise criminal act. *Henson v. State*, 786 N.E.2d 274, 277 (Ind. 2003). A person is justified in using reasonable force against another person to protect the person or a third person from what the person reasonably believes to

be the imminent use of unlawful force. Ind. Code § 35-41-3-2. In order to prevail on such a claim, the defendant must show that he: (1) was in a place where he had a right to be; (2) did not provoke, instigate, or participate willingly in the violence; and (3) had a reasonable fear of death or great bodily harm. *Wilson*, 770 N.E.2d at 800. When a claim of self-defense is raised and finds support in the evidence, the State has the burden of negating at least one of the necessary elements. *Id.*

The evidence shows that Benjamin burned Ashley with a lighter, choked her, pushed her, and hit her with a closed fist. She suffered a concussion, fractured hand, swelling, pain, and burn scars as a result. At trial, Benjamin testified that he dropped the lighter on Ashley by accident and Ashley started hitting and kicking him in response. Benjamin said that he warned her to stop and then hit her once in self-defense. On appeal, Benjamin argues that “[his] recitation of events is much more plausible, especially in light of Ashley’s injuries which are indicative of having hit someone, rather than having defended against being hit. Mr. Claunch acted in self-defense and his conviction for battery must be vacated.” Appellant’s Br. p. 5. However, Ashley testified that she received her injuries while attempting to escape from Benjamin’s attack. Further, evidence in the record shows that Benjamin instigated the violence and participated willingly. The trial court was entitled to disbelieve Benjamin’s self-serving testimony. Thus, Benjamin’s argument is merely an invitation for us to reweigh the evidence, which we will not do.

Affirmed.

KIRSCH, J., and CRONE, J., concur.